EXHIBIT A

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 11-12799(MFW)

- x

In the Matter of:

SOLYNDRA LLC, ET AL,

Debtors.

- x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

October 22, 2012

10:02 AM

B E F O R E :

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

HEARING re Debtor's Amended Joint Chapter 11 Plan (Filed September 7, 2012; Docket No. 1059)

HEARING re Memorandum in Support of Confirmation of Debtors' Amended Joint Chapter 11 Plan and Omnibus Reply to Objections to the Plan (Filed October 15, 2012; docket No. 1140)

Transcribed by: Sheila Orms

testified quite clearly that that's exactly the intention, and that those efforts are already underway, and there's no controverting evidence.

THE COURT: Thank you. All right. Let's take a short break and I'll issue a ruling.

(Recessed at 11:22 a.m.; reconvened at 11:32 a.m.)

THE CLERK: All rise.

THE COURT: Well, let me address the or remaining objections to the debtor's plan. But first, let me address the IRS claim that the primary purpose of the plan is the avoidance of taxes. And I think that objection must be overruled.

It is clear in this case that the bankruptcy and the plan of reorganization deal with many other things other than the value of the NOLs, or the preservation of the NOLs. The bankruptcy and the plan of reorganization dealt with the settlement of the creditor's committee's claims against the tranch A lenders, settlement of the WARN Act claims again who claimed they had a claim against Argonaut and Madrone and not simply the debtor.

It provides a distribution to creditors now, the preservation of claims through a litigation trust. For the benefit of creditors, it is much more than simply the preservation of the NOLs.

The IRS argues that there would be no reason for

Madrone and Argonaut to agree to pay what they are into the plan for the satisfaction of unsecured claims if the NOLs were not there. I'm not sure that's true, because in fact since they were being sued or threatened to be sued by the WARN Act claimants for a judgment and by the unsecured creditors to recharacterize their tranch A claim, there were many reasons to agree to enter into those settlements, and not simply to preserve the NOLs.

I have read the various e-mails. It is clear that Madrone and Argonaut were aware of the NOLs. It was clear they were aware that if the plan were restructured in a certain way the NOLs could be preserved. But that does not mean that the entire purpose of this plan and even structuring the plan to preserve the NOLs means that the primary purpose of the plan is to avoid taxes.

Again, it has to be the primary, most important purpose of the plan for tax avoidance, and I just do not see that in this circumstance.

As in WaMu though, the plan does not eliminate any rights the IRS may have to assert that the NOLs cannot be utilized under the Internal Revenue Code, at the time that the reorganized debtor seeks to use them. Quite frankly, I view the plan and the confirmation order as neither enhancing nor affecting any of the rights of any of the parties to the NOL.

So I'll overrule the IRS objection on that point.

With respect to the U.S. Trustee's argument that the discharge of holdings is inappropriate under 1141(d). I will overrule that also. There are three factors that must be met, all three. It is clear that the third factor is met here. The reorganized debtor holdings is not eligible for a discharge under 727 because it is not an individual debtor. But I think that the first two factors are not met.

The plan does not provide for liquidation of all or substantially all of the assets of holding. It does provide, and one of the principal assets of holding is the anti-trust litigation. It provides for the prosecution of that and use of the proceeds of that to pay creditors. I don't view that as a liquidation. In addition, it preserves the corporation for the purpose that the corporation was formed, and that is to be a holding company to invest in subsidiaries and that is the business of a holding company.

The fact that its one current business is being liquidated, the LLC, does not mean that it does not intend to operate a business in the future, or that it is liquidating all of its businesses. It is clear that Argonaut and Madrone do intend to invest in holdings. I don't think it's necessary that that investment be included in the plan of reorganization.

I have heard ample testimony of their intent to do

that, and their ability, in fact, that is their business to invest funds on behalf of their client or clients. In addition, the fact that they have sought to preserve the NOLs makes it likely that they will invest in holdings.

But if -- let me give an example. If, in fact, they were denied a discharge, the unsecured creditors of holdings would get no more than they are getting now, which is a part of the recovery of the anti-trust action. And it is significant to me that the general unsecured creditors, in fact, all of the interested parties in holdings have voted in favor of the plan, which includes the discharge of holdings. And it is likely again that A&M will invest, so long as holdings gets a discharge. If holdings did not have a discharge, it is unlikely that anybody would invest into it.

So I think that I'm satisfied the evidence is sufficient to conclude that the debtor will engage in business after confirmation, and that the plan is not providing for the liquidation of all of the assets.

With respect to the remaining objection, which is the Department of Energy's objection. First, with respect to its asserted super priority administrative claim that was granted to it under the DIP financing, in order to assert that the plan is not confirmable because it does not treat that claim, I think it is incumbent upon the DOE to

establish that it does, in fact, have such a claim. I don't think it is as simplistic as the debtors suggest, which is that what was the amount of their claims on day one, and what is it now, and the debtor's answer is zero. I think I do have to evaluate what the assets were sold for on a gross basis, and deduct properly only the costs of liquidating those assets.

The DIP did provide for the payment of the professional fees though, and they are ahead of the super priority claim or any super priority claim that the Department of Energy would be entitled to, the carve out portion. So I have to determine what the revenues or proceeds of the sale were, and what were the properly deducted direct costs of sale. And I disagree with the Department of Energy that that is only the broker fees previously approved. I think it is evident from this case that those assets could not be sold as a turnkey. The evidence is clear. They could not be sold in many instances without dismantling and decontaminating those. And therefore, I think those costs are properly deducted from the proceeds. They could not be sold unless the rent was paid, and the equipment was left in place, in order to inspect and have an auction of many of those assets.

So the rent is properly deducted. All of these are necessary costs of sale. Quite frankly I did not see

anything in the MOR which are simply 506(c) claims that had no relationship to the sale of these assets. And therefore, I do think that the result is that quite frankly there was no collateral left for the DOE claim, and therefore, no diminution in value. While on day one, everybody thought that we would have a turnkey sale that would result in sufficient funds to pay the tranch A and the DIP, the reality it was not.

And I agree with Judge Gerber, the true test of the fair market value of assets is what somebody's willing to pay for, and we found that. And the net asset value is insufficient to pay the tranch A and the DIP claims, both of which come ahead of the Department of Energy, and therefore, I find that the Department of Energy has no secured claim, and similarly no super priority claim that must be treated in this plan.

With respect to the exit facilities, I don't find that they're impermissible under the plan. The tranch 1, which is being used to refinance the DIP and to pay the carve out and to pay the necessary costs of closing the sale of Fab 2, all of those items come ahead of any DOE claim, and therefore that is appropriate.

With respect to the tranch 2, that is being granted only on unencumbered assets, and it is to pay the expenses of the residual trust, which expenses have to be

paid in order for the DOE, as well as any other creditor, to realize any value on the asset that is being contributed to the trust, which is the anti-trust litigation.

So I think those are appropriate as well. And I would be happy to approve them under 364, but I'm not being asked to approve them under 364. But at any rate, that inclusion in the plan does not violate any specific provision of the Bankruptcy Code, and therefore, it will be approved.

So those being the only objections to the debtor's plan and based on the evidence testimony and the report of plan voting, I will confirm the debtor's plan.

MS. GRASSGREEN: Thank you very much, Your Honor. We do have a form of confirmation order, and as I noted at the outset of the case, there were some changes made with respect to comments from the Environmental Protection Agency, and the purchaser of asset Seagate. And some of them were changes for clarifications in the plan, so if -- I do have a blackline of the confirmation order from the one that was filed, and if I could approach.

THE COURT: You may. Thank you.

Do you want to --

MS. GRASSGREEN: Your Honor, we have circulated this to the key parties in interest, but if you'd like I could just highlight the changes.